

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5971 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

VALJIBHAI DHBUBHAI CHHARA

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner
MR AB VYAS, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/03/99

ORAL JUDGEMENT

Detention order dated 15.7.1998 passed by the Police Commissioner, Vadodara City under section 3(2) of the Prevention of Antisocial Activities Act (for short 'PASA') is under challenge in this writ petition under Article 226 of the Constitution of India with prayers that the aforesaid order be quashed and the petitioner be

released from illegal detention.

From the grounds of detention it seems that the Detaining Authority on the basis of three registered offences under Bombay Prohibition Act, and in view of the statements of two confidential witnesses, was satisfied that the petitioner is bootlegger and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed.

During the course of argument the detention order has been challenged only on one ground that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order, hence, the impugned order is invalid. The learned Assistant Government Pleader on the other hand contended that bootlegging activity itself is injurious and dangerous to public at large and as such the detention order is valid with reference to three registered offences as well as with reference to two statements of two confidential witnesses.

Having given to my careful consideration to the arguments advanced by the two sides I am satisfied that the subjective satisfaction of the Detaining Authority that the petitioner is bootlegger hardly requires any interference. For this, there was enough material before the Detaining Authority in the nature of three registered offences under Bombay Prohibition Act and the two confidential witnesses also stated about bootlegging activities of the petitioner. Thus, the petitioner was rightly declared as bootlegger by the Detaining Authority.

A bootlegger within the meaning of section 2(b) of PASA can be detained preventively only when his activities are found prejudicial for maintenance of public order. Three registered offences under Bombay Prohibition Act, cannot be said to have created situation prejudicial for maintenance of public order, in as much as, there is no indication in the grounds of detention that the petitioner on those three occasions at the time of search and seizure created any situation of obstructing search and seizure or created situation which was actually or likely to be prejudicial for maintenance of public order.

Then remains the statements of two confidential witnesses. From the statement of first witness, it is clear that it was activity and incident between witness and the petitioner only. The witness himself admitted

that on his alarm nobody from the vicinity rushed towards the spot to save him. As such, public at large or any section thereof was not affected by the first incident narrated by the first witness. Mere beating by the petitioner to the witness by kicks and fists cannot be said to have created situation prejudicial for maintenance of public order.

The second witness has stated about some incident of beating and upon his alarm certain persons from vicinity collected. But there is no indication from his statement that members of the crowd were also beaten or injuries were caused to them. In such situation, it will be difficult to presume in the second incident that peace and tranquillity of the area or even tempo of the life of the locality was disturbed. Consequently, both the incidents cannot be said to have created situation prejudicial for maintenance of public order.

The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 15.7.1998 is quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt